

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JEREMY JOSEPH SIMMONS,) CASE NO. C07-1495-TSZ
Petitioner,)
v.) REPORT AND RECOMMENDATION
[UNNAMED],)
Respondent.)

)

INTRODUCTION AND SUMMARY CONCLUSION

15 Petitioner, proceeding *pro se* and *in forma pauperis*, submitted a 28 U.S.C. § 2254 habeas
16 corpus petition challenging his March 2003 conviction for robbery in the first degree with a
17 firearm enhancement. On February 4, 2008, the Court issued an Order declining to serve the
18 petition and granting Petitioner leave to submit an amended petition within thirty days, warning
19 him that the Court would recommend dismissal of his case if no amended petition were filed. On
20 February 21, 2008, the Order was returned in the mail as undeliverable. To date, the Court has
21 not received an amended petition from petitioner. Accordingly, for the reasons described below,
22 the Court recommends dismissal of petitioner's habeas petition.

01 First, Petitioner's petition failed to name the person having custody over the prisoner. See
02 Rule 2(a), 28 U.S.C. foll. § 2254; Fed. R. Civ. P.82(a)(2); *Stanley v. California Supreme Court*,
03 21 F.3d 891, 894 (9th Cir. 1996). A petitioner's failure to name his or her custodian as a
04 respondent deprives the district court of jurisdiction. See *Stanley*, 21 F.3d at 360. Because
05 petitioner's proposed § 2254 petition fails to name a respondent, the Court lacks personal
06 jurisdiction to consider his habeas petition.

07 Second, it does not appear that petitioner has exhausted his state remedies. "An
08 application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment
09 of a State court shall not be granted unless it appears that . . . the applicant has exhausted the
10 remedies available in the courts of the State." 28 U.S.C. § 2254(b)(1)(A). To exhaust state
11 remedies, a petitioner must present each of his claims to the state's highest court. *O'Sullivan v.*
12 *Boerckel*, 526 U.S. 838, 845 (1999); *James v. Borg*, 24 F.3d 20, 24 (9th Cir. 1993). In this case,
13 petitioner indicates that he did not seek further review by a higher court after the Washington
14 State Court of Appeals, Division One, upheld his conviction on appeal. (Proposed § 2254
15 Petition, 2)

16 Third, at least sixty (60) days prior to this date of this Report and Recommendation, mail
17 directed by the Clerk to petitioner was returned by the Post Office. Petitioner has not notified the
18 Court of his current address. Thus, pursuant to Local Rule CR 41(b)(2), the Court may dismiss
19 the action without prejudice for failure to prosecute.

20 In failing to file an amended petition, petitioner failed to remedy the deficiencies outlined
21 above and in the Court's previous order. Accordingly, the Court recommends dismissal of this
22 action without prejudice. A proposed Order of Dismissal accompanies this Report and

01 Recommendation.

02 DATED this 22nd day of April, 2008.

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Mary Alice Theiler
United States Magistrate Judge